whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

* * * * *

(4) Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit).

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

§ 779.23 Establishment.

As used in the Act, the term *establishment*, which is not specially defined therein, refers to a ''distinct physical place of business'' rather than to ''an entire business or enterprise'' which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (*Phillips* v. *Walling*, 324 U.S. 490; *Mitchell* v. Bekins Van & Storage Co., 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., 1st Sess., p. 25). As appears more fully elsewhere in this part, this is the meaning of the term as used in sections 3(r), 3(s), 6(d), 7(i), 13(a), 13(b), and 14 of the Act.

§ 779.24 Retail or service establishment.

In the 1949 amendments to the Act, the term ''retail or service establishment'', which was not previously defined in the law, was given a special definition for purposes of the Act. The legislative history of the 1961 and the 1966 amendments to the Act, which use the same term in a number of provisions relating to coverage and exemptions, indicates that no different meaning was intended by the term ''retail or service establishment'' as used in the new provisions from that already established by the Act's definition. On the contrary, the existing definition was reenacted in section 13(a)(2) of the Act as amended in 1961 and 1966 as follows: ''A 'retail or service establishment' shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry''. The application of this definition, which has had much judicial construction since its original enactment, is considered at length in subpart D of this part. As is apparent from the quoted language, not every establishment which engages in retail selling of goods or services will constitute a ''retail or service establishment'' within the meaning of the Act.

Subpart B—Employment to Which the Act May Apply: Basic Principles and Individual Coverage

GENERAL PRINCIPLES

§ 779.100 Basic coverage in general.

Except as otherwise provided in specific exemptions, the minimum wage, maximum hours, overtime pay, equal pay, and child labor provisions of the Act have applied and continue to apply subsequent to the 1966 amendments to employees who are individually engaged in interstate commerce or in the production of goods for such commerce as these terms are defined in the Act and to employees in certain enterprises described in the amended section 3(s) which were covered under section 3(s)

of the Act prior to the amendments. Through the broadening of the definition of a covered enterprise the Act's coverage was extended to additional employees because of their employment in certain enterprises beginning February 1, 1967, and in certain other enterprises beginning February 1, 1969. Such covered enterprises are described in section 3(s) as enterprises engaged in commerce or in the production of goods for commerce and further described in sections 3(s) (1) through (4) of the amended Act. A detailed discussion of the coverage of employees in those enterprises covered under the prior and amended Act of interest to the retail industry is contained in subpart C of this part. The employer must comply with the minimum wage and overtime requirements of the Act with respect to all employees who are covered either because they are individually engaged in interstate or foreign commerce or in the production of goods for such commerce, or because of their employment in an enterprise covered under the prior or amended enterprise definition of the Act, except those who may be denied one or both of these benefits by virtue of some specific exemption provision of the Act. Of special interest to the retailer in a covered enterprise is the exemption from the minimum wage and overtime provisions for certain small retail or service establishments of such enterprise. This exemption is applicable under the conditions and subject to exceptions stated in section 13(a) (2) of the Act to any retail or service establishment which has an annual dollar volume of sales of less than $250,000 (exclusive of certain excise taxes) even if the establishment is a part of an enterprise that is covered by the Act. This exemption and other exemptions of particular interest to retailers and their employees are discussed in subparts D and E of this part. The child labor provisions as they apply to retail or service businesses are discussed in subpart F of this part.

§ 779.101 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. ''Breadth of coverage is vital to its mission.'' (*Powell* v. *U.S. Cartridge Co.*, 339 U.S. 497.) An employer who claims an exemption under the Act has the burden of showing that it applies. (*Walling* v. *General Industries Co.*, 330 U.S. 545; *Mitchell* v. *Kentucky Finance Co.*, 359 U.S. 290; *Fleming* v. *Hawkeye Pearl Button Co.*, 113 F. 2d 52.) Conditions specified in the language of the Act are ''explicit prerequisites to exemption.'' (*Arnold* v. *Kanowsky*, 361 U.S. 388.) ''The details with which the exemptions in this Act have been made preclude their enlargement by implication.'' (*Addison* v. *Holly Hill*, 322 U.S. 60; *Maneja* v. *Waialua*, 349 U.S. 254.) Exemptions provided in the Act ''are to be narrowly construed against the employer seeking to assert them'' and their application limited to those who come plainly and unmistakably within their terms and spirit; this restricted or narrow construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed. (*Phillips* v. *Walling*, 324 U.S. 490; *Mitchell* v. *Kentucky Finance Co.*, supra; *Arnold* v. *Kanowsky*, supra; *Calaf* v. *Gonzalez*, 127 F. 2d 934; *Bowie* v. *Gonzalez*, 117 F. 2d 11; *Mitchell* v. *Stinson*, 217 F. 2d 210; *Fleming* v. *Hawkeye Pearl Button Co.*, 113 F. 2d 52.)

§ 779.102 Scope of this subpart.

The Act has applied since 1938 and continues to apply to all employees, not specifically exempted, who are engaged: (a) In interstate or foreign commerce or (b) in the production of goods for such commerce, which is defined to include any closely related process or occupation directly essential to such production. (See §§ 779.12–779.16 for definitions governing the scope of this coverage.) Prior to the 1961 amendments a retailer was not generally concerned with the coverage provisions as they applied to his individual employees because retail or service establishments ordinarily were exempt. However, in some cases such coverage was applicable as where employees were employed in central offices of warehouses of retail chain store systems and, therefore, were not exempt. (See § 779.118.) Some exemptions for retail or service establishments were narrowed as a result of